

15.2909

No. 14410

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United States  
Court of Appeals  
for the Ninth Circuit

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ERWIN P. WERNER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

AUG 31 1954

PAUL P. O'BRIEN  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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For Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;  
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Assistant U. S. Attorney,  
807 Federal Bldg.,  
Los Angeles 12, Calif.





United States District Court for the Southern  
District of California, Central Division

No. 13302-M

ERWIN P. WERNER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

FIRST AMENDED COMPLAINT FOR MONEY  
AND FOR USE AND OCCUPATION OF  
LAND AND FOR DECLARATORY RELIEF

Comes Now the plaintiff and for cause of action  
against the defendant complains and alleges as  
follows:

I.

That at all times herein mentioned, plaintiff has  
been, and now is, a resident of the County of Los  
Angeles, State of California, and at all times has  
been, and now is, a citizen of the United States of  
America.

II.

That the United States District Court has juris-  
diction over this litigation by reason of the fact  
that the defendant is the United States of America  
and the plaintiff is a citizen of said country.

III.

That on or about the 17th day of May, 1948, the  
plaintiff [2\*] herein became and was the owner in

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\*Page numbering appearing at foot of page of original Certified  
Transcript of Record.

fee, and therefore entitled to the full enjoyment and possession of the following real property, situated in the County of Riverside, in the State of California, and more particularly described as follows:

The southeast (SE) one-quarter ( $\frac{1}{4}$ ) of the southeast (SE) one-quarter ( $\frac{1}{4}$ ) of Section Sixteen (16), Township Three (3) South, Range Four (4) West, S. B. B. & M., containing forty (40) acres more or less.

#### IV.

That on or about February 1, 1943, the plaintiff's predecessor in interest and the defendant, the United States of America, executed a lease of the above-described real property; a typewritten copy of said lease is hereto annexed, made a part hereof, and marked "Exhibit A."

That on or about May 31, 1943, the plaintiff's predecessor in interest and the defendant, the United States of America, executed a supplemental agreement to dispense with notice of renewal of the above-described real property; a typewritten copy of said supplemental agreement is hereto annexed, made a part hereof, and marked "Exhibit B."

#### V.

That by the terms and provisions of the lease and the supplemental agreement, the termination thereof was expressed as follows: "\* \* \*; and provided further that this lease shall in no event extend beyond six months from the date of the termination

of the unlimited national emergency, as declared by the President of the United States on May 27, 1941 (Proclamation 2487)."

That a copy of said Proclamation 2487 is hereto annexed, made a part hereof and marked "Exhibit C."

## VI.

That the "Unlimited National Emergency" confronting the [3] United States as proclaimed by the President of the United States was based upon a threat to the security of the United States by "the Axis belligerents."

That at the time of the execution of said lease and supplemental agreement, the United States was at war with "the Axis belligerents"; that the said "Axis belligerents" consisted of the Imperial Government of Japan, Italy, Germany and Austria; that at that time the allied nations consisted of the United States of America, the Imperial Government of Great Britain, the Republic of France, and the Soviet Republic of Russia.

## VII.

That on December 31, 1946, the President of the United States issued a Proclamation No. 2714, a copy of which is hereto annexed, made a part hereof and marked "Exhibit D"; that in said Proclamation appears the following language:

"Now Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World

War II, effective twelve o'clock noon, December 31, 1946."

That prior to December 31, 1946, all of the Axis belligerents that were engaged in a war with the allied nations had unconditionally surrendered.

### VIII.

That on December 16, 1950, the President of the United States proclaimed the existence of a National Emergency by Proclamation 2914, a photostatic copy of which is hereto annexed and made a part hereof and marked "Exhibit E." That by this Proclamation the President of the United States recognized a new threat to the peace and security of the United States; that he declared recent events constituted a grave threat to the peace of this country; that the world conquest by Communist Imperialism is the goal of [4] aggression that have been loosed upon the world and that the increasing menace of the forces of Communist aggression requires that the national defense of the United States be strengthened as speedily as possible.

### IX.

That the plaintiff contends that the "Unlimited National Emergency," as proclaimed by the President of the United States in Proclamation 2487, "Exhibit C," is and has been terminated by reason of the following facts, or by a combination of one or more of the following facts as set forth, or by any additional facts which may arise prior to the

time that this Court makes its decision and of which this Court is compelled to take judicial notice:

1. That the Unlimited Emergency, as proclaimed by the President of the United States May 27, 1941, Proclamation 2487, "Exhibit C," was merged and therefore terminated, between December 31, 1946, and December 16, 1950, by reason of world conquest by Communistic Imperialism as evidenced by the events in Korea and elsewhere, which constitutes a threat to the peace of the world, and to the United States of America, and which culminated in the official proclamation of December 16, 1950, Proclamation 2914, "Exhibit E," by President Truman.

2. That on September 8, 1943, the Imperial Government of Italy signed the Articles of Surrender.

3. That on February 10, 1947, a Treaty of Peace was signed at Paris between the Government of Italy and the Government of the United States (this same Treaty was executed by the other belligerents) and was ratified September 15, 1947, by the United States Senate (State Document No. 2960). The Treaty of Friendship, Commerce and Navigation between Italy and the United States was ratified by the United States July 26, 1949.

4. No reason exists to consider Italy a threat to the security of the United States within the meaning of the Presidential [5] Proclamation of May 27, 1941; that on May 6, 1945, at 8:41 o'clock p.m., the Government of Austria signed the Articles of Surrender.

5. That in the Moscow Declaration of November 1, 1943, the United States, Great Britain and the



Soviet Union proclaimed that Austria was a victim of Hitlerite aggression and that the annexation of Austria on March 15, 1938, was null and void, as per letter of Department of State of August 6, 1951, annexed hereto and made a part hereof and marked "Exhibit F"; that therefore a state of war does not exist between Austria and the United States, and that therefore "no reason exists to consider Austria a threat to the security of the United States within the meaning of the Presidential Proclamation of May 27, 1941." (See Exhibit F.)

That on April 27, 1945, Austria was restored to a Republic of eight provinces under the leadership of Dr. Karl Renner, and this democratic Republic was accepted by the Allied Council representing the Allied Powers, and so recognized on October 20, 1945.

6. That on May 7, 1945, at 2:41 o'clock a.m., the Government of Germany signed the Articles of Surrender.

That on July 27, 1951, the House of Representatives unanimously voted to end the state of war, against Germany, at the request of the President of the United States, and that subsequently thereto, on the .... day of ....., .., the Senate of the United States voted to end the state of war with Germany, and that on the .... day of ....., .., the President of the United States signed the legislation to end the state of war with Germany; that the plaintiff asks leave to insert

the day, month and year when and the same are ascertained.

That since the merger of the unlimited emergency as declared by the President of the United States in 1941, and the merger therewith, with the emergency as declared by the President of the United States on December, 1950, there no longer exists a threat to the security of the United States as contemplated by the unlimited emergency of 1941, as proclaimed by and within the meaning of the [6] Presidential Proclamation (see Exhibit C).

7. That on September 1, 1945, the Imperial Government of Japan signed the Articles of Surrender. Therefore, no reason exists to consider Japan a threat to the security of the United States within the meaning of the Presidential Proclamation of May, 1941.

Plaintiff is informed and believes the truth to be, and therefore alleges, that the terms of a tentative Treaty of Peace has been agreed upon by the representatives of the Government of Japan and the defendant, the United States of America; that September 4, 1951, has been set as the date for the formal signing of said Treaty of Peace. Said Treaty of Peace with Japan was signed on the 8th day of September, 1951, with the United States of America; that on or about the .... day of ....., the Treaty of Peace was ratified by the Senate of the United States; the plaintiff hereby asks leave to insert the correct date as soon as the same are ascertained.

The plaintiff alleges, as the owner of the afore-

said real property in fee simple, that he is deprived of the possession thereof, and for the use and enjoyment and the benefits that inure to him by virtue of the Lease and the Supplemental Agreement on such real estate; that the said Lease and Supplemental Agreement were entered into by the Lessor on a patriotic basis at a time when the defendant, the United States of America, was actually engaged in war, and the payment of rental thereof at the rate of \$25.00 per year constituted, primarily, only a token payment; that the real estate leased constituted forty (40) acres of land of the reasonable value of \$40,000; that since May 17, 1948, at which time plaintiff became the owner in fee, the defendant, the United States of America, has paid him no money or monies for use and occupation of said real estate; that the said Lease and Supplemental Agreement constitutes a cloud upon the title of the said real estate and deprives the plaintiff [7] from possession thereof, and from the enjoyment of its use and occupation; that the said plaintiff is unable to sell said real property and/or hypothecate the same for the purposes of a real estate loan; that defendant is and at all times herein mentioned has been and is in possession of said real property against the will and consent of the plaintiff.

## X. .

Plaintiff alleges that by the terms and conditions of the said Lease for the said real property aforesaid, and by the terms and conditions of the Supplemental Agreement, providing that the said Lease



shall in no event extend beyond six months from the date of the termination of the unlimited National Emergency as declared by the President of the United States on May 27, 1941 (Proclamation 2487), the said lease has been terminated; that the unlimited National Emergency, as per Proclamation 2487, has ceased to exist; that there no longer exists a threat to the security of the United States of America as was contemplated by the Proclamation 2487; that various Treaties of Peace between the defendant, the United States of America, and the former belligerent nations have been executed, agreed upon and are in process of consummation; that various treaties of friendship, trade and commerce between the defendant, the United States of America, and the former belligerent nations have been executed, agreed upon and are in process of consummation; that the Treasury Department of the United States of America, by its regulation of its commerce and the fixing of the rates of exchange of the former belligerent nations, and that the said State Department in establishing its diplomatic service among former belligerent nations, or some of them, and by reason of the unconditional surrender of all of the former belligerents the unlimited National Emergency, as proclaimed by President Roosevelt May 27, 1941, has become and is terminated, and have dissolved forever the Axis belligerents as they existed as a threat at the time of the signing on the lease herein mentioned. [8]

## XI.

Plaintiff prays that in addition to the reasons

specifically set forth in the complaint that the Court consider all other matters of which it is compelled to take judicial notice.

## XII.

Plaintiff prays leave of Court to amend the complaint to conform to all those events and progress which may affect the consideration of this cause.

### Second Cause of Action

#### I.

Plaintiff incorporates paragraphs I to XII, inclusive, of the First Cause of Action and makes them a part of this, his Second Cause of Action, the same as though separately set forth herein.

#### II.

That the lease herein and the supplemental agreement was terminated between May 7, 1948, and December 6, 1950, for the reasons stated in Paragraph 8 of the First Cause of Action; that ever since said date of termination of lease and the supplemental agreement the defendant has been and now is in actual possession, use and enjoyment of the said real property against the will of the plaintiff and against his consent, and in violation of the termination of said lease and supplemental agreement. Plaintiff further alleges that the fair market value of said land is \$40,000.00.

#### III.

That the reasonable value for use and occupation of said real property, since the termination of said

lease and supplemental agreement to date of filing of the complaint is the reasonable sum of [9] \$10,000.00.

Wherefore, plaintiff prays that the Court declare and adjudge:

1. The rights of the parties relative to the lease of the real estate herein involved.

2. That the lease of the real estate herein involved is terminated as of the . . . . day of . . . . ., . . . . .

3. That the Unlimited National Emergency, as defined in the Proclamation of the President of the United States (Proclamation 2487) declared on May 27, 1941, has been terminated by reason of the facts alleged and set forth in the complaint as of the . . . . day of . . . . ., . . . . .

4. That the plaintiff have judgment against the defendant, The United States of America, as compensation for loss of use and occupation of the real estate.

5. And for such other relief as the Court deems fit and proper.

/s/ CLARENCE E. NELSON,  
Attorney for Plaintiff. [10]

## EXHIBIT A

### Lease Between

Mark L. Herron and Barbara W. Herron and  
The United States of America

1. This Lease, made and entered into this first day of February in the year one thousand nine

hundred and forty-three by and between Mark L. Herron and Barbara W. Herron, husband and wife, whose address is 1025 Chapman Building, Los Angeles, California, for themselves, their heirs, executors, administrators, successors and assigns, hereinafter called the Lessor, and 'The United States of America, hereinafter call the Government.

Witnesseth: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

2. The Lessor hereby leases to the Government the following described premises, viz.:

All of that certain parcel of land in the Alessandro District, County of Riverside, State of California, described as:

The Southeast quarter (SE $\frac{1}{4}$ ) of the Southeast quarter (SE $\frac{1}{4}$ ) of Section 16, Township 3 South, Range 4 West S. B. B. & M., containing 40 acres, more or less, to be used exclusively for the following purposes (See instruction No. 3):

Military purposes.

3. To Have and to Hold the said premises with their appurtenances for the term beginning February 1, 1943, and ending June 30, 1943.

4. The Government shall not assign this lease in any event, and shall not sublet the demised premises except to a desirable tenant and for a similar purpose, and will not permit the use of said premises by any one other than the Government, such sublessee, and [11] the agents and servants of the Government, or of such sublessee.

5. This lease may, at the option of the Govern-

ment, be renewed from year to year at a rental of twenty-five and no/100 Dollars (\$25.00) per year, and otherwise upon the terms and conditions herein specified, provided notice be given in writing to the Lessor at least thirty (30) days before this lease or any renewal thereof would otherwise expire: Provided that no renewal thereof shall extend the period of occupancy of the premises beyond six (6) months from the date of the termination of the unlimited National Emergency, as declared by the President of the United States on May 27, 1941. (Proclamation 2487)

6. The Lessor shall furnish to the Government during the occupancy of said premises, under the terms of this lease, as part of the rental consideration, the following:

Nothing.

7. The Government shall pay the Lessor for the premises at the following rate:

Twenty-five and no/100 Dollars (\$25.00) per year, or pro rata amount for fractional period of use thereof.

Finance officer, U. S. Army, Fort Douglas, Utah, is designated to pay this rental.

Payments shall be made at the end of each fiscal year.

8. The Government shall have the right, during the existence of this lease, to make alterations, attach fixtures and erect additions, structures or signs, in or upon the premises hereby leased (Provided



such alterations, additions, structures or signs shall not be detrimental to or inconsistent with the rights granted to other tenants on the property or in the building in which said premises are located); which fixtures, additions or structures so placed in or upon or attached to the said premises shall be and remain the property of the Government and may be removed therefrom by the Government prior to the termination of this lease, and the Government, if required by [12] the Lessor shall, before the expiration of this lease or renewal thereof, restore the premises to the same condition as that existing at the time of entering upon the same under this lease, reasonable and ordinary wear and tear and damages by the elements or by circumstances over which the Government has no control excepted: Provided, however, that if the Lessor requires such restoration, the Lessor shall give written notice thereof to the Government twenty (20) days before the termination of the lease.

(Paragraphs 9 and 10 deleted.)

11. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefit to arise therefrom. Nothing, however herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

12. The Government reserves the right to cancel this lease at any time during its life or renewal

thereof by giving thirty (30) days advance written notice to the Lessor.

13. The condition of the demised premises is outlined in a Joint Record of Physical Survey which is appended hereto and made a part hereof.

Paragraphs 9 and 10 deleted, and Paragraphs 12 and 13 added.

In Witness Whereof, the parties hereto have hereunto subscribed their names as of the date first above written.

/s/ MARK L. HERRON,

/s/ BARBARA W. HERRON,

Husband and wife, Lessor.

UNITED STATES  
OF AMERICA,

By /s/ THOMAS F. OREGHAN,

Chief Los Angeles Sub-office  
Contracting officer.

In Presence of:

/s/ INEZ M. KEMPER,

2020 Beachwood Dr.,  
Hollywood, Calif.

Certified true copy.

/s/ GEORGE T. WIGMORE. [13]

Instructions to Be Observed in Executing Lease

1. This standard form of lease shall be used whenever the Government is the lessee of real prop-

erty except that when the total consideration does not exceed \$100.00 and the term of the lease does not exceed 1 year the use of this form is optional. In all cases where the rental to be paid exceeds \$2,000.00 per annum the annual rental shall not exceed 15 per centum of the fair market value of the rented premises at the date of lease. Alterations, improvements and repairs of the rented premises by the Government shall not exceed 25 per centum of the amount of the rent for the first year of the rental term or for the rental term if less than 1 year.

2. The lease shall be dated and the full name and address of the lessor clearly written in paragraph 1.

3. The premises shall be fully described and, in case of rooms, the floor and room number of each room given. The language inserted at the end of Article 2 of the lease should specify only the general nature of the use, that is, "office quarters," "storage space, etc."

4. Whenever the lease is executed by an attorney, agent, or trustee on behalf of the lessor, two authenticated copies of his power of attorney, or other evidence to act on behalf of the lessor shall accompany the lease.

5. When the lessor is a partnership, the names of the partners composing the firm shall be stated in the body of the lease. The lease shall be signed with the partnership name, followed by the name of the partner signing the same.



6. Where the lessor is a corporation, the lease shall be signed with the corporate name, followed by the signature and title of the officer or other person signing the lease in its behalf, duly attested, and, if requested by the Government, evidence of his authority so to act shall be furnished.

7. Under paragraph 6 of the lease insert necessary facilities to be furnished, such as head, light, janitor service, etc. [14]

8. There shall be no deviation from this form without prior authorization by the Director of Procurement, except—

(a) Paragraph 3 may be drafted to cover a monthly tenancy or other period less than a year.

(b) In paragraph 5 if a renewal for a specified period other than a year, or for a period optional with the Government is desired, the phrase, “from year to year” shall be deleted and proper substitution made. If the right of renewal is not desired or cannot be secured paragraph 5 may be deleted.

(c) Paragraph 6 may be deleted if the owner is not to furnish additional facilities.

(d) If the premises are suitable without alterations, etc., paragraph 8 may be deleted.

(e) Paragraph 9 provides that the lessor shall, “unless herein specified to the contrary, maintain the said premises in good repair, etc.” A modification or elimination of this requirement would not therefore be a deviation.

(f) In case the premises consist of unimproved land, paragraph 10 may be deleted.

(g) When executing leases covering premises in foreign countries departure from the standard form is permissible to the extent necessary to conform to local laws, customs or practices.

(h) Additional provisions, relating to the particular subject matter mutually agreed upon may be inserted, if not in conflict with the standard provisions, including a mutual right to terminate the lease upon a stated number of days' notice, but to permit only the lessor so to terminate would be a deviation requiring approval as above provided.

9. When deletions or other alterations are permitted specific notation thereof shall be entered in the blank space following paragraph 11 before signing.

10. If the property leased is located in a State requiring the recording of leases in order to protect the tenant's rights, care should be taken to comply with all such statutory requirements. [15]

## EXHIBIT B

### Supplemental Agreement to Dispense With Notice of Renewal

This Supplemental Agreement entered into this 31st day of May, 1943, by and between Mark L. Herron and Barbara F. Herron, husband and wife, whose address is 1025 Chapman Building, Los Angeles, California, for themselves, their heirs, executors, administrators, successors, and assigns, hereinafter called the Lessor, and The United

States of America, hereinafter called the Government, Witnesseth:

Whereas on Feb. 1, 1943, a lease was entered into between the Lessor and the Government covering all of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Southeast Quarter (SE $\frac{1}{4}$ ) of Section 16, Township 3, South, Range 4 West, S. B. B. & M., containing 40 acres, more or less, being located in the Alessandro District of the County of Riverside, State of California, for the period February 1, 1943, to June 30, 1943, with option of renewal annually thereafter to six months from the date of the termination of the unlimited National Emergency, as declared by the President of the United States on May 27, 1941, (Presidential Proclamation 2487).

Whereas it is desired to amend said lease to dispense with the services of notice of renewal for each fiscal year, as hereinafter provided;

Now, Therefore, the parties hereto do hereby amend said lease in the following respects and in these only:

1. Provisions 3 and 5 are deleted, and there is inserted in lieu thereof the following provision numbered 3:

“3. To Have and to Hold the Said Premises with their appurtenances for the term beginning July 1, 1943, through June 30, 1944, provided that, unless and until the Government shall give notice of [16] termination in accordance with provision 12 hereof, this lease shall remain in force thereafter from year to year

without further notice; provided further that adequate appropriations are available from year to year for the payment of rentals; and provided further that this lease shall in no event extend beyond six months from the date of the termination of the unlimited National Emergency, as declared by the President of the United States on May 27, 1941 (Proclamation 2487).”

In Witness Whereof, the parties hereto have executed this instrument as of the day and year first above written.

/s/ MARK L. HERRON,  
Lessor.

/s/ BARBARA W. HERRON,  
THE UNITED STATES OF  
AMERICA,

By /s/ THOMAS F. GROGHAN,  
(Contracting officer)  
Chief Los Angeles Sub-office.

Witness:

/s/ INEZ M. KEMPER,  
2020 Beachwood Dr.,  
Hollywood, California.

A True Copy

(If Lessor is a corporation, the following certificate shall be executed by the secretary or assistant secretary.)

I, ....., certify that I am the ..... Secretary of the corporation named as Lessor in the attached agreement; that ..... who signed said agreement on behalf of the Lessor was then ..... of said corporation; that said agreement was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of the corporate powers.

[Corporate Seal.]

.....,  
....., [17]

## EXHIBIT C

### Appendix

Presidential Proclamation 2487 of May 21, 1941, 6 F. R. 2617, 55 Stat. 1647, 50 App. U.S.C. Note prec. sec. 1, p. 5636, is as follows:

Proclaiming That an Unlimited National Emergency Confronts This County, Which Requires That Its Military, Naval, Air and Civilian Defenses Be Put on the Basis of Readiness to Repel Any and All Acts or Threats of Aggression Directed Toward Any Part of the Western Hemisphere

By the President of the United States of America

### A Proclamation

Whereas on September 8, 1939, because of the



outbreak of war in Europe a proclamation was issued declaring a limited national emergency and directing measures "for the purpose of strengthening our national defense within the limits of peacetime authorizations,"

Whereas a succession of events makes plain that the objectives of the Axis belligerents in such war are not confined to those avowed at its commencement, but include overthrow throughout the world of existing democratic order, and a worldwide domination of peoples and economies through the destruction of all resistance on land and sea and in the air, and

Whereas indifference on the part of the United States to the increasing menace would be perilous and common prudence requires that for the security of this nation and of this hemisphere we should pass from peacetime authorizations of military strength to such a basis as will enable us to cope instantly and decisively with any attempt at hostile encirclement of this hemisphere, or the establishment of any base for aggression against it, as well as to repel the threat of [18] predatory incursion by foreign agents into our territory and society,

Now, Therefore, I, Franklin D. Roosevelt, President of the United States of America, do proclaim that an unlimited national emergency confronts this country, which requires that its military, naval, air and civilian defenses be put on the basis of readiness to repel any and all acts or threats of aggression directed toward any part of the Western Hemisphere.

I call upon all the loyal citizens engaged in production for defense to give precedence to the needs of the nation to the end that a system of government that makes private enterprise possible may survive.

I call upon all our loyal workmen as well as employers to merge their lesser differences in the larger effort to insure the survival of the only kind of government which recognizes the rights of labor or of capital.

I call upon loyal state and local leaders and officials to cooperate with the civilian defense agencies of the United States to assure our internal security against foreign directed subversion and to put every community in order for maximum productive effort and minimum of waste and unnecessary frictions.

I call upon all loyal citizens to place the nation's needs first in mind and in action to the end that we may mobilize and have ready for instant defensive use all of the physical powers, all of the moral strength and all of the material resources of this nation.

In Witness Whereof I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this twenty-seventh day of May, in the year of our Lord nineteen hundred and forty-one, and of the Independence of the United States of America the one hundred and sixty-fifth.

(Seal)

FRANKLIN D. ROOSEVELT.

By the President:

CORDELL HULL,  
Secretary of State.

(No. 2487)

(F. R. Doc. 41-3808; filed May 28, 1941; 9:45 [19]  
a.m.)

### EXHIBIT D

Presidential Proclamation 2714 of December 31, 1946, 12 F. R. 1, 61 Stat. 1048, 50 App. U.S.C.S. 601 p. 5728, is as follows:

#### Cessation of Hostilities of World War II

By the President of the United States of America

#### A Proclamation

With God's help this nation and our allies, through sacrifices and devotion, courage and perseverance, wrung final and unconditional surrender from our enemies. Thereafter, we, together with the other United Nations, set about building a world in which justice shall replace force. With spirit, through faith, with a determination that there shall be no more wars of aggression calculated to enslave the peoples of the world and destroy their civilization, and with the guidance of Almighty Providence great gains have been made in translating military victory into permanent peace. Although a state of war still exists it is at this time possible to declare, and I find it to be in the public interest to declare, that hostilities have terminated.



Now, Therefore, I, Harry S. Truman, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II effective twelve o'clock noon, December 31, 1946.

In Witness Whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington this 31st day of December in the year of our Lord nineteen hundred forty-six, and of the Independence of the United States of America the one hundred and seventy-first.

(Seal)

HARRY S. TRUMAN.

By the President:

JAMES F. BYRNES,

The Secretary of State. [20]

## EXHIBIT E

The National Archives of the United States  
Federal Register

1934

Volume 15, Number 245

Page 9029

Washington, Tuesday, December 19, 1950

Title 3—The President

Proclamation 2914

Proclaiming the Existence of a  
National Emergency

By the President of the United States of America

A Proclamation

Whereas recent events in Korea and elsewhere constitute a grave threat to the peace of the world and imperil the efforts of this country and those of the United Nations to prevent aggression and armed conflict; and

Whereas world conquest by communist imperialism is the goal of the forces of aggression that have been loosed upon the world; and

Whereas, if the goal of communist imperialism were to be achieved, the people of this country would no longer enjoy the full and rich life they have with God's help built for themselves and their children; they would no longer enjoy the blessings of the freedom of worshipping as they severally choose, the freedom of reading and listening to what they choose, the right of free speech including the

right to criticize their Government, the right to choose those who conduct their Government, the right to engage freely in collective bargaining; the right to engage freely in their own business enterprises, and the many other freedoms and rights which are a part of our way of life; and

Whereas the increasing menace of the forces of communist aggression requires that the national defense of the United States be strengthened as speedily as possible:

Now, Therefore, I, Harry S. Truman, President of the United States of America, do proclaim the existence of a national emergency, which requires that the military, naval, air and civilian defenses of this country be strengthened as speedily as possible to the end that we may be able to repel any and all threats against our national security and to fulfill our responsibilities in the efforts being made through the United Nations and otherwise to bring about lasting peace.

I summon all citizens to make a united effort for the security and well-being of our beloved country and to place its needs foremost in thought and action that the full moral and material strength of the Nation may be readied for the dangers which threaten us.

I summon our farmers, our workers in industry, and our businessmen to make a mighty production effort to meet the defense requirements of the Nation and to this end to eliminate all waste and inefficiency and to subordinate all lesser interests to the common good.

I summon every person and every community to make, with a spirit of neighborliness, whatever sacrifices are necessary for the welfare of the Nation.

I summon all State and local leaders and officials to cooperate fully with the military and civilian defense agencies of the United States in the national defense program.

I summon all citizens to be loyal to the principles upon which our Nation is founded, to keep faith with our friends and allies, and to be firm in our devotion to the peaceful purposes for which the United Nations was founded.

I am confident that we will meet the dangers that confront us with courage and determination, strong in the faith that we can thereby "secure the Blessings of Liberty to ourselves and our Posterity."

In Witness Whereof, I have hereunto set my hand and caused the Seal of the United States of America to be affixed.

Done at the City of Washington this 16th day of December (10:20 a.m.) in the year of our Lord nineteen hundred and fifty, and of the Independence of the United States of America the one hundred and seventy-fifth.

(Seal)

HARRY S. TRUMAN.

By the President:

DEAN ACHESON,

Secretary of State.

EXHIBIT "F"

Department of State  
Washington

August 6, 1951.

In reply refer to

WE 763.00/7-3051

Werner, Erwin P.

My dear Mr. Werner:

Reference is made to your letter of July 28, 1951, in which you asked several questions regarding relations between the United States and Austria.

Since the United States never declared war on Austria, a state of war does not exist between Austria and the United States. In the Moscow Declaration of November 1, 1943, the United States, Great Britain and the Soviet Union proclaimed that Austria was a victim of Hitlerite aggression and that the German annexation of Austria on March 15, 1938, was null and void. They expressed their desire that Austria be re-established as a free and independent country.

Under these circumstances there is no necessity for a peace treaty with Austria. Since January 14, 1947, the United States, Great Britain, France and the Soviet Union have conducted negotiations for an Austrian State Treaty with a view to ending the four-power occupation of Austria and settling Austrian problems arising from the war. The Council of Foreign Ministers had discussed this subject several times and the Deputies on the Austrian

Treaty, whom the Foreign Ministers appointed to negotiate the Treaty, have met no fewer than 258 times, the last meeting having been held in London in December, 1950.

The present Austrian Government is a coalition based on the two major parties, the People's Party and the Socialists, and is considered a stable, democratic government. The Communist Party, [22] which has not polled more than five per cent of the vote in any national election since 1945, is not a member of the coalition.

No reason exists to consider Austria a threat to the security of the United States within the meaning of the Presidential Proclamation of May 27, 1941.

Sincerely yours,

For the Secretary of State:

MONTGOMERY H.

COLLADAY,

Officer in Charge Italian-  
Austrian Affairs.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed August 28, 1951. [23]



United States District Court, Southern District of  
California, Central Division

No. 13,302-HW Civil

ERWIN P. WERNER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### ANSWER

Comes Now the United States of America, defendant herein, not admitting the jurisdiction of this court, but denying and disputing the same, and for answer to the First Amended Complaint herein says:

As to the First Cause of Action

#### First Defense

The United States of America has not consented and does not consent to be sued in this action, and this court was and is without jurisdiction.

#### Second Defense

The First Amended Complaint fails to state a claim against the defendant upon which relief can be granted.

#### Third Defense

Neither right of action set forth in the First Amended Complaint accrued within six years next before the commencement of this action. [35]

## Fourth Defense

The declaration of an unlimited national emergency, as evidenced by Presidential Proclamation 2487, dated May 27, 1941, and the scope, effect, and duration thereof, are an executive function, not subject to judicial inquiry or control, and this court was and is without jurisdiction in the premises.

## Fifth Defense

1. The defendant admits the allegations of paragraphs numbered I, V, VII, and VIII of plaintiff's First Amended Complaint.

2. The allegations of paragraph numbered II are denied.

3. The defendant is without knowledge as to when or whether the plaintiff became the owner of the property therein described, and can neither admit nor deny the same.

4. The defendant admits that on or about February 1, 1943 it made and entered into a lease with Mark L. Herron and Barbara W. Herron, husband and wife, of 1025 Chapman Building, Los Angeles, California, covering the property therein described, and on or about May 31, 1943, entered into a supplemental agreement affecting said lease, copies of which lease and supplement are attached to the First Amended Complaint as Exhibits A and B thereof.

5. Answering paragraph numbered VI of plaintiff's First Amended Complaint, the defendant ad-



mits that at the time of the execution of said lease and supplemental agreement the United States was at war with what were then generally known as the "Axis Belligerents," and at that time, that is to say, from and for a time after February 1, 1943, the "Axis Belligerents" consisted of the Imperial Government of Japan, Germany, Italy, and Austria, among others; but the defendant denies that the "Unlimited National Emergency" confronting the United States, as proclaimed by the President on May 27, 1941, Proclamation 2487, was based upon the "alignment of Axis belligerents" as it existed in 1943. At the time of the issuance of the Presidential proclamation [36] (Proclamation 2487), dated May 27, 1941, the "Axis Belligerents" included, among others, the Union of Soviet Socialist Republics, Germany, and Italy. Further answering said paragraph numbered VI, the defendant alleges that the unlimited national emergency declared by the President in Proclamation 2487 was not limited in effect, scope or operation by the identity of the powers constituting the "Axis Belligerents" on that date, but included all who then or thereafter lent aid and assistance to them or either of them; and that said unlimited national emergency, as declared in said Proclamation 2487, did not terminate until April 28, 1952, by Presidential Proclamation 2974 (17 Fed. Reg. 3813).

6. Answering paragraph numbered IX, the defendant denies that the unlimited national emergency, as proclaimed by the President of the United

States in Proclamation 2847, Exhibit C to the First Amended Complaint, terminated as a result or by reason of the facts, public acts, treaties, or declarations mentioned in said paragraph, or any or either of them, but says that said unlimited national emergency continued until the aforesaid Presidential Proclamation 2974 terminating it, issued on April 28, 1952, 17 Fed. Reg. 3813. Further answering paragraph numbered IX, the defendant denies that the leased property has or had a value of \$40,000, and denies that the defendant has failed or refused to pay the rental reserved in said lease and, on the contrary, alleges that it has offered and continues to offer the rentals reserved in said lease until the termination thereof, but that the plaintiff has declined and refused to accept the same or any part thereof.

7. Answering paragraph numbered X, the defendant denies that the unlimited national emergency, as declared by the President on May 27, 1941, Presidential Proclamation No. 2487, was terminated until April 28, 1952, as more particularly set forth in paragraph numbered 5 of this Fifth Defense.

8. Neither paragraph numbered XI or XII of the First Amended Complaint contains any allegations of fact, and no answer [37] thereto is required.

#### As to the Second Cause of Action

The defendant incorporates herein and pleads as a defense hereto all and singular, each and every,

the allegations and denials set forth in the first, second, third, fourth, and fifth defenses to the first cause of action.

Dated: January 25, 1954.

UNITED STATES OF  
AMERICA,

LAUGHLIN E. WATERS,  
United States Attorney;

JOSEPH F. McPHERSON,  
Assistant United States  
Attorney;

By /s/ JOSEPH F. McPHERSON,  
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 26, 1954. [38]

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[Title of District Court and Cause.]

MEMORANDUM OF OPINION

On the 1st day of February, 1943, Mark L. Herron and Barbara W. Herron, husband and wife, entered into a lease with the United States of America, covering forty acres of land near the March Field air base at Riverside County, California. The lease provided for payment of \$25.00 per year rental, and further provided that occupancy of the premises could not be extended beyond "six months

from the date of the termination of the unlimited National Emergency, as declared by the President of the United States on May 27, 1941 (Proclamation 2487).”

On May 17, 1948, Mr. and Mrs. Herron deeded the property covered by the lease to the plaintiff herein. Subsequent to said transfer, plaintiff filed an action in this [40] United States District Court praying that the lease be reformed so as to provide for its termination “six months from the date of cessation of the actual hostilities of the Axis Nations then at war or the surrender of said Axis Nations.” The government moved for dismissal of the action on several grounds, among them that the action was barred by the statute of limitations. The court found the action was so barred and dismissed it “for want of jurisdiction over the United States.” On appeal the District Court was affirmed (*Werner v. United States*, 188 F. 2d 266).

Subsequent to that decision Werner then brought this action, alleging a number of facts which, he claimed, brought the emergency to an end so far as it related to the lease in suit. The government did not choose to plead to the merits of the complaint as filed but pleaded the judgment in the earlier action as *res judicata*. This court examined the opinion as rendered by the Ninth Circuit in the Werner case, *supra*, and found therein a statement:

“There has been no ‘\* \* \* termination of the unlimited national emergency \* \* \*’ declared

by President Roosevelt on May 27, 1941, by Proclamation 2487.”

Upon the basis of that statement this court in the instant case further determined and decreed that the unlimited national emergency had not been terminated.

In *Werner v. United States*, 198 F. 2d 882, the Ninth Circuit, commenting upon its previous decisions, said:

“\* \* \* We hold that this court did no more than affirm the judgment appealed to it. In our opinion we did state that there had been [41] no termination of the emergency but this statement was a mere recital of the undisputed fact that no official termination of the emergency had been pronounced.”

The Circuit then reversed and remanded the case, stating:

“\* \* \* Appellant is entitled to his day in court \* \* \*”

The matter now comes on for hearing for the third time—to give plaintiff his “day in court” as directed by the Circuit. At the hearing plaintiff did not in any manner attempt to prove any basis for the allegations contained in his amended complaint to show the national emergency had been brought to an end but, instead, contended the national emergency was terminated by a Joint Resolution of Congress dated July 25, 1947, Public Law



239, 80th Cong., 1st Sess., Chapter 327 (61 Stat. 449).

Section 3 of the Joint Resolution recites:

“In the interpretation of the following statutory provisions, the date when this joint resolution becomes effective shall be deemed to be the date of the termination of any state of war heretofore declared by the Congress and of the national emergencies proclaimed by the President on September 8, 1939, and on May 27, 1941.”

It is plaintiff's contention that the lease in question was acquired under § 171, Title 50, U.S.C.A., and that this Act was specifically mentioned in Section 3 of the Act of July 2, 1917, as amended. [42]

The government contends the national emergency was not terminated by the Joint Resolution of Congress but, on the other hand, was terminated by an official proclamation made by the President on April 28, 1952, in which is stated:

“Now, Therefore, I, Harry S. Truman, President of the United States of America, do proclaim that the national emergencies declared to exist by the proclamations of September 8, 1939, and May 27, 1941, terminated this day \* \* \*”  
[66 Stat. C31 at C32].

If the national emergency with which we are concerned in this litigation was terminated by the Joint Resolution of Congress on July 25, 1947, plaintiff is entitled to a recovery in this action. On



the other hand, if the national emergency did not terminate until President Truman's Proclamation on April 28, 1952, plaintiff is not entitled to judgment.

The problem thus presented is two-fold:

1. Can a national emergency proclaimed by the President be terminated by Congress, and
2. If Congress may terminate a national emergency, did the Joint Resolution of July 25, 1947, terminate the national emergency as proclaimed by President Roosevelt?

There has been no contention that anyone other than the President may issue a Proclamation determining the existence of a national emergency. There is no suggestion that the other two branches of government, or either of them—judicial or legislative—may in any way usurp the duties of the President by declaring the existence of a national emergency. If the President is the only one who may [43] declare a national emergency, is he alone empowered to terminate it?

The Supreme Court discusses the problems here involved in *Ludecke v. Watkins*, 335 U. S. 160 at 170, as follows:

“The political branch of the Government has not brought the war with Germany to an end. On the contrary, it has proclaimed that ‘a state of war still exists.’ \* \* \* The Court would be assuming the functions of the political agencies of the Government to yield to the suggestion

that the unconditional surrender of Germany and the disintegration of the Nazi Reich have left Germany without a government capable of negotiating a treaty of peace. It is not for us to question a belief by the President \* \* \* These are matters of political judgment for which judges have neither technical competence nor official responsibility."

It seems to this court the determination that a national emergency existed is a matter of political judgment, and determination that the national emergency no longer exists is also a matter of political discernment, which judges have "neither technical competence nor official responsibility" to decide. If this is a matter which has been given exclusively to the executive branch of government and the judicial branch has no official responsibility therein, it would also seem to this court that the legislative branch has no right to determine matters of political judgment.

This point of view is substantiated by the President's action when (even though Congress by a Joint Resolution on July 25, 1947, determined the national emergency [44] had ceased) he, nevertheless, on April 28, 1952, issued a proclamation definitely declaring the national emergency as proclaimed by the President on May 27, 1941, "terminated this day." And further substantiation for this point of view is found in the opinion of the United States Supreme Court in *Knauff vs. Shaughnessy*, 338 U. S. 537, decided January 25,

1950, nearly three years after the date of the Joint Resolution. The Supreme Court said, at page 546:

“\* \* \* The national emergency has never been terminated. Indeed, a state of war still exists.”

Plaintiff at bar contends, however, that the foregoing opinion is not in point because the Supreme Court was discussing legislation relative to war brides, and the statement that “the national emergency has never been terminated” must be restricted to the War Brides Act. The Court says, page 546:

“\* \* \* The special procedure followed in this case was authorized not only during the period of actual hostilities but during the entire war and the national emergency proclaimed May 27, 1941.”

It is after this quoted statement that the Court goes on to say: “The national emergency has never been terminated.”

If we read into the Supreme Court’s statement, “in respect to the War Brides Act,” we are interpolating. It may be true that the Circuit Court may determine the Supreme Court did nothing more than affirm the judgment of the lower court, but, as we read the case, here is a statement that the national emergency had not been terminated; and in the light [45] of other authorities this court is of the opinion that the national emergency as proclaimed by the President on May 27, 1941, was

not legally and officially terminated until April 28, 1952, when the President of the United States issued a proclamation in which he stated the national emergency had been "terminated this day."

As a consequence, this court is of the opinion that Congress by its Joint Resolution did not terminate the national emergency and, therefore, the plaintiff in this action is not entitled to recover.

Findings of Fact, Conclusions of Law and Judgment in conformity with this opinion will be prepared by defendant for presentation for signature on or before the 15th day of March, 1954.

Dated: March 1, 1954.

/s/ HARRY C. WESTOVER.

District Judge.

[Endorsed]: Filed March 2, 1954. [46]

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on to be heard, before the United States District Court for the Southern District of California, the Honorable Harry C. Westover, District Judge, presiding, sitting without a jury, on the 5th day of February, 1954, and was concluded that day. Evidence was introduced by both parties, the case was argued, points and

authorities were filed on behalf of the defendant, and the matter submitted. The court, being fully advised in the premises and having filed its Memorandum of Opinion herein on March 2, 1954, now makes its findings of fact and conclusions of law, as follows:

### Findings of Fact

1. On February 1, 1943, Mark L. Herron and Barbara W. Herron, his wife, being the record owners thereof, made and entered into a written lease with the defendant covering the property in Riverside County, California, described as the Southeast quarter (SE  $\frac{1}{4}$ ) of the Southeast quarter (SE  $\frac{1}{4}$ ) of Section 16, Township 3 South, Range 4 West, S. B. B. & M., containing 40 acres, more or less, for a renewable term, with a reserved rental of \$25.00 per annum. [47]

On May 31, 1943, the parties to said lease made and entered into a supplemental agreement which, among other things, dispensed with the necessity of notice of renewal and provided:

“3. To Have and to Hold the said premises with their appurtenances for the term beginning July 1, 1943, through June 30, 1944, provided that, unless and until the Government shall give notice of termination in accordance with provision 12 hereof, this lease shall remain in force thereafter from year to year without further notice; provided further that adequate appropriations are available from year to year



for the payment of rentals; and provided further that this lease shall in no event extend beyond six months from the date of the termination of the unlimited National Emergency, as declared by the President of the United States on May 27, 1941 (Proclamation 2487)."

2. The national emergency referred to in said lease, as supplemented, was declared by the Honorable Franklin Delano Roosevelt, President of the United States, by Proclamation No. 2487, dated May 27, 1941.

3. Said national emergency, so declared by the Honorable Franklin Delano Roosevelt, continued to and until April 28, 1952, when it was terminated by the Honorable Harry S. Truman, President of the United States, by Proclamation No. 2974, which, among other things, provides:

"Now, Therefore, I, Harry S. Truman, President of the United States of America, do proclaim that the national emergencies declared to exist by the proclamations of September 8, 1939, and May 27, 1941, terminated this day \* \* \*" [66 Stat. C31 at C32.]

4. On May 17, 1948, the plaintiff herein acquired the property in question by deed from the said Mark L. Herron and Barbara W. Herron, his wife, is presently the owner thereof, and is entitled to the unpaid rentals as reserved in said lease as [48] supplemented.

5. The rentals reserved in said lease as supple-



mented, from and after the 30th day of June, 1945, have not been paid, but were duly and lawfully tendered to the plaintiff, were refused, and the plaintiff is not entitled to any interest thereon.

6. During all the dates and times mentioned herein, prior to April 28, 1952, there was valid and subsisting statutory authority authorizing the defendant to acquire or lease the property herein, other than 50 U.S.C.A. 171.

### Conclusions of Law

The court adopts and by reference incorporates herein as its conclusions of law its Memorandum of Opinion, filed herein on March 2, 1954.

Let judgment be entered herein in accordance herewith.

Dated: This 16th day of March, 1954.

/s/ HARRY C. WESTOVER,  
District Judge.

Presented by:

LAUGHLIN E. WATERS,  
United States Attorney;

JOSEPH F. McPHERSON,  
Assistant U. S. Attorney;

By /s/ JOSEPH F. McPHERSON,  
Attorneys for Defendant.

[Endorsed]: Filed March 16, 1954. [49]

United States District Court, Southern District of  
California, Central Division

No. 13,302-HW Civil

ERWIN P. WERNER,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

### FINAL JUDGMENT

The above-entitled cause coming on to be heard, before the United States District Court for the Southern District of California, the Honorable Harry C. Westover, District Judge, presiding, sitting without a jury, on the 5th day of February, 1954; the parties appearing by counsel, evidence having been introduced, the court being fully advised in the premises, having filed herein its Memorandum of Opinion and Findings of Fact and Conclusions of Law,

Now, Therefore, It Is Adjudged, Ordered and Decreed:

#### I.

That the lease between plaintiff's predecessors in title and the defendant, dated February 1, 1943, as supplemented by written agreement dated May 31, 1943, was a valid and subsisting lease to and until October 28, 1952.

#### II.

That the rentals therein reserved at the rate of \$25.00 per annum from and after the 30th day of

June, 1945, have not been paid, though due and lawfully tendered to and refused by the plaintiff. [50]

III.

That the plaintiff have and recover from the defendant the sum of \$183.15, being the unpaid rental for the period June 30, 1945, to October 28, 1952, without interest.

IV.

That the defendant have and recover of and from the plaintiff herein its costs in this behalf sustained, now here taxed at \$20.00.

Dated: This 16th day of March, 1954.

/s/ HARRY C. WESTOVER,  
District Judge.

Presented by:

LAUGHLIN E. WATERS,  
United States Attorney;  
JOSEPH F. McPHERSON,  
Assistant U. S. Attorney;

By /s/ JOSEPH F. McPHERSON,  
Attorneys for Defendant.

Approved as to Form:

.....,

MORRIS LAVINE,  
Attorney for Plaintiff.

[Endorsed]: Filed March 16, 1954.

Docketed and entered March 17, 1954. [51]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

Comes Now the plaintiff, Erwin P. Werner, and files his written notice of appeal from that certain order and judgment rendered by the Honorable Harry C. Westover, Judge of the United States District Court for the Southern District of California, in the above-entitled action to the United States Court of Appeals for the Ninth Circuit of the United States of America.

Dated: April 9, 1954.

/s/ MORRIS LAVINE,

Attorney for Plaintiff and  
Appellant.

[Endorsed]: Filed April 13, 1954. [52]

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered from 1 to 58, inclusive, contain the original First Amended Complaint; Special Appearance and Motion to Dismiss; Order for Dismissal; Mandate; Answer; Memorandum of Opinion; Findings of Fact and Conclusions of Law; Final Judgment;

Notice of Appeal; Praecipe and Two Orders Extending Time to Docket Appeal which, together with Reporter's Transcript of Proceedings on February 3, 1954, and Original Exhibits, transmitted herewith, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00, which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 30th day of July, A.D. 1954.

[Seal]                      EDMUND L. SMITH,  
Clerk;

By /s/ THEODORE HOCKE,  
Chief Deputy.

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[Endorsed]: No. 14410. United States Court of Appeals for the Ninth Circuit. Erwin P. Werner, Appellant, vs. United States of America, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed July 1, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14410

ERWIN P. WERNER,

Appellant,

vs.

UNITED STATES OF AMERICA,

Respondent.

POINTS UPON WHICH APPELLANT  
INTENDS TO RELY ON APPEAL

The appellant assigns the following as Points upon which he intends to rely on appeal for reversal of the judgment below:

I.

The National Emergencies as proclaimed by the President, on September 8, 1939, and on May 27, 1941, were both terminated by Congress by joint resolution, dated July 25, 1947, Public Law 239, 80th Congress, 1st Session, Chapter 327 (61 Stat. 449).

II.

That as a consequence thereof the lease entered into by and between the plaintiff and defendant on the 1st day of February, 1943, was ipso facto terminated July 25, 1947 (and was not valid until Oct. 28, 1952).

III.

That the President of the United States, without



the authority of Congress, has no authority to create or terminate an emergency.

IV.

That Congress has Constitutional power to terminate an emergency declared by the President.

V.

That the contract in the instant case did not provide for or require its termination by presidential decree. The contract itself provided the event of its termination, whether by the President or Congress.

VI.

That the President of the United States has no constitutional power to terminate private contracts.

VII.

The Trial Court erred in not awarding plaintiff interest from six months after July 25, 1947, to date.

The plaintiff designates as parts of the record on which he relies:

- (1) Complaint.
- (2) Answers.
- (3) Memorandum of Opinion by lower court, and
- (4) Findings of Fact and Conclusions of Law. and Judgment.

Notice of Appeal.

/s/ MORRIS LAVINE,

Attorney for Appellant.

[Endorsed]: Filed July 10, 1954.

